

CONSERVATION COMMISSION MEETING

April 12, 2016

Amesbury City Hall Auditorium,
62 Friend Street, Amesbury, MA 01913

Meeting called to order at 6:35 PM

Present: Alan Corey, Kinsey Boehl, Suzanne Egan.

Absent: Steve Langlois.

Also Present: John Lopez, Agent, Barbara Foley, recording secretary.

Transcription by: Paul Bibaud

Commissioner Boehl is acting Chair.

MINUTES:

February 1, 2016: Motion by Suzanne Egan to approve minutes as submitted, seconded by Alan Corey. AIF.

March 7, 2016: Motion to approve minutes as submitted by Suzanne Egan, seconded by Alan Corey. AIF.

ADMINISTRATIVE:

UPDATE: Amesbury Heights (002-0936)-36 Haverhill Road (Corcoran-Jennison Associates)

John Lopez: There are two issues here for 36 Haverhill Road- Amesbury Heights. You'll note that further down in the agenda, under new business, is a Request to Modify the Order of Conditions. That has since been rescinded by the applicant. However, the applicant is here to provide an update on proceedings as well as a need for additional funding for monitoring services. This was supplied to us by our consultant, Stantec, Mike Leach, a copy of which was forwarded to the applicant. Mike Leach is here to address some outstanding issues, which the applicant is hoping to secure approval on.

Sean McReynolds, Corcoran – Jennison: The applicant has made great strides over this last winter, getting site under control and installing erosion controls. Still doing some site work, looking to start building construction in the next couple weeks. Working with Stantec on things. One reason we're here tonight is a concern of our site contractor installing the sewer line on an adjacent property that we don't own, but we have rights to do. We need to install a sewer line on Route 110. The approved limit construction were probably about a ten foot wide trench with erosion controls on each side. Given the really silty nature of the soils, we've been proposing to widen it given the safety issues that any of the workers on the sewer line would need adequate space to do it. So tonight we are proposing to widen the temporary construction limits in order to allow for safer installation of the sewer lines on Route 110. I have Connor Nagle from VHB here to discuss any technical issues, and I know Stantec is here to go over it also, as well as the city or ConCom.

John Lopez: So the applicant is contending that the request is minor and does not reach the threshold of an amendment. ConCom is reminded that DEP doesn't officially recognize modified. They do, however, allow a ConCom a certain level of discretion in which they acknowledge that plans do to change over the course of a project, and if a ConCom defines it as a minor change, then they are willing to support that. So the issue is if this ConCom considers this a minor change. If not, then an amended Order would need to be requested, which is in a formal process. This is why I asked our consultant Mike Leach from Stantec to provide recommendations and his opinion on this as well.

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Michael Leach from Stantec: What the applicant is proposing is actually something they need to do for construction. Safety issues are primary concern. This seems like a practical approach to addressing this particular situation. It is only a small portion of the site. They may want to provide ConCom with additional information, like because of the expansion of the earth they just started, probably some restoration might be appropriate for that. I'm sure they have a plan to do that. Other than that, that is my opinion for this project.

Sean McReynolds: The limit now shows it as 10 foot wide, so we're proposing to make that 50 feet.

Alan Corey: So you moved the siltation fencing out to 25 feet on either side.

Sean McReynolds: Yes. We're not intending to impact any more than that.

Alan Corey: And you're not looking to do any mitigation, those are just staying the way they are?

Sean McReynolds: Correct.

Suzanne Egan: So it was initially proposed to be a ten foot wide area, and now it will become 50 feet wide? So what is the setback exactly from the wetlands that are existing there? Seems to me it would be a lot closer to the wetlands.

Sean McReynolds: It is closer. We're proposing to stay 10 feet off those two small wetlands there.

Alan Corey: The trench you're digging is staying the same size, right? You're not changing the trench for the sewer line, right?

Sean McReynolds: Because the depth of the sewer is about 15 feet, the trench would be 5 feet wide at the bottom of the trench. The trench has to flare due to the silty soils. We discussed with the owner a planting plan who would prefer that we seed this and use erosion control where necessary due to slopes being steeper on only one side as opposed to flat. So we don't believe we'll landscape it, per the owner's request. He has plans for future development, apparently. The existing conditions include some mature trees that are not very clear visually, so a plan would be great.

Suzanne Egan: I think it would be helpful to us if you return with a planting plan so we can look at it. What you may need to do is give us a date certain as to when that plan would be submitted to ConCom and when the plan would actually be implemented. So you say you would be able to come back with a mitigation plan on May 2 and when you be doing the replanting on your site. In the interim, we can start working on the widening. As long as Stantec, John and ConCom sign off on the mitigation

Sean McReynolds: It would be towards the end of construction.

John Lopez: Our next meeting is May 2. Commissioner Egan mentioned having a date certain time by which time we would receive the proposed mitigation plan. The deadline for May 2 has passed. However, I just spoke with our administrative assistant who is willing to relax that rule if we can come up with a plan that would be incorporated into the meeting packet.

MOTION was made by Suzanne Egan to grant the minor modification to the plan submitted, on the condition that a mitigation plan will be submitted to ConCom by April 24 for its review on May 2 and that mitigation plan will show additional plantings that will be done at the time the original plantings were scheduled and incorporated into the Order of Conditions. Motion was seconded by Alan Corey. AIF.

John Lopez: The request for additional monitoring services: I spoke with the applicant today, as well as our consultant, and the monitoring fees have pretty much been depleted. So Mr. Leach has submitted a contract extension to get us through the next several months. I've shared that with the applicant and it met with his approval. So I request ConCom consider the proposal and approve it as submitted.

Motion was made by Suzanne Egan to approve. Motion was seconded by Alan Corey. AIF.

REQUEST FOR ADDITIONAL FUNDING FOR Monitoring Service, 36 Haverhill Road (McReynolds) See above. Granted.

CHAIR AND VICE CHAIR NOMINATIONS AND ELECTION (AMESBURY CONSERVATION COMMISSION)

John Lopez: Just a reminder that next month an election for Chair and Vice Chair will be held. So think about if you want to run for a position, etc. We also may be adding another commissioner by next month. She has a meeting with the mayor's chief of staff on April 25. I'm hoping she will be sworn in by the city clerk and be available to us for the June meeting.

REQUEST FOR Third Party review for NOI 002-1142-78 Lake Attitash Rd. (Buscanera)

John Lopez: ConCom issued an Enforcement Order for violations to a valid Order of Conditions. The OoC were for a minor modification to an existing structure. The applicant elected to demolish the existing house, without an amended OoC and without the knowledge of the building inspector. But that is beyond our scope. We are mostly concerned with wetland issues. ConCom issued a \$9000 fine, \$2500 of which was to be made payable within ten business days. That was met. At the same time, the Enforcement Order required a Notice of Intent be submitted for the construction of a single family house. The NOI hearing was open. ConCom elected Mill River as the consultant. The applicant has requested River started to draft a proposal, however, they realized there was insufficient information on the NOI for the single family house construction. They halted their review, requesting additional information from the applicant's representative. To the best of my knowledge, that information remains outstanding.

Vincent Buscanera: Right now we have a plan for existing conditions.

Alan Corey: What we're reviewing right now is the request to change the review company.

Kinsey Boehl: We've used Mill River a lot on Lake Attitash issues, so they are familiar with the sites.

Suzanne Egan: I think we had a recent single family house that was very similar to this that Mill River reviewed, and worked on at 28 Lake Attitash. He did an excellent job, almost worthy to be used as a model for all properties in the same situation. I'd suggest Mill River be retained.

Vincent Buscanera: He does do a good job and is very detailed about everything he does, but his cost is double of what it costs to hire someone to make my plan. My plan costs \$2500 to make. This guy wanted \$4500 to \$5500 to review it. It costs me a ton of money. I bought the house a year ago, and I'm trying to put it back together.

Alan Corey: You're requesting that you use Robert Prokop. Have we used him before?

John Lopez: You have, for 128 Kimball Road.

Alan Corey: Then I don't see any reason to not let him use Robert Prokop, if he is less expensive and did a good job.

John Lopez: That would set a precedent. So the question now is, why not allow the applicant to always select the consultant?

Suzanne Egan: Also, I think under the law, when ConCom chooses a third party consultant, there is a process through which the applicant can appeal that decision, and that is going to the mayor, and they make a decision based on somebody's qualifications. But to come back before the ConCom with a motion to reconsider choosing it, and that would have to be discussed that this is a permitting board and we have to follow the rules.

Kinsey Boehl: So there is a process, John?

John Lopez: There is an appeal process. The applicant can't really appeal based on cost. The applicant can appeal to municipal council based upon a demonstrated conflict of interest or the consultant being not qualified.

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Vincent Buscanera: Shouldn't I have a choice, instead of you saying you have to take this guy, and that's it?

Kinsey Boehl: We have known vendors we use, that don't have a conflict of interest with the city, and that is why they are selected.

Vincent Buscanera: It's been done before without an appeal process. A guy wants \$5500 and found a guy to do it for \$1400. So it has been allowed before without an appeal process.

Kinsey Boehl: I don't know about that.

John Lopez: It should be done if the applicant is before the commission for a minor project that was approved without the need for a peer review, and it was approved in one hearing. Then the applicant took it upon himself to demolish the entire house.

Vincent Buscanera: I had permission to fix that whole foundation. I couldn't fix the foundation with the house sitting on top of it. So we had to take it down section by section. Our problem here is, the cross section of the foundation that was replaced, I had permission to replace twelve feet of it. But once we started digging over there, another ten foot section had to be replaced. We wanted to do it right. There is no harm to environment getting hurt, nothing is going into the lake, it's all been in check every time it rains out.

Kinsey Boehl: Which is why the city has third party reviewers, to protect the city interests.

Suzanne Egan: There is a process to change consultants.

Kinsey Boehl: Personally, I have no interest in allowing a change of reviewers. If there exists a process for appeals, I suggest you guys pursue that.

Vincent Buscanera: Well, you guys assigned another company, and then he said he wasn't going to pay that, I want to use another guy. The ConCom gave him another guy. So right now, it seems like you guys when you have a favor for somebody, you do it. When you don't, you just...

Kinsey Boehl: Our commission would not do that.

Alan Corey: Honestly...

Vincent Buscanera: I don't want to mention any names, but...I'm just wanting to build my house and save money. I've done everything I've been asked to do. If you guys don't want to be with us, fine.

Alan Corey: Its not that we don't want to, we can't do it. Our hands are tied.

Vincent Buscanera: I'm getting hit hard here by everything.

Alan Corey: We can't do it because it is not legal.

Vincent Buscanera: It has been done before, and I'm a witness to it.

Kinsey Boehl: Well, there is an appeal process, and you can pursue that. Request was denied by ConCom.

Vincent Buscanera: We'll keep Mill River.

Kinsey Boehl: Thank you.

CONTINUED BUSINESS:

NOI (002-1129) – 60, 75, & 77 MERRIMAC STREET (HATTERS POINT MARINA-MCPARTLAND)

John Lopez: This is in reference to this NOI submitted pursuant to an Enforcement Order for an unauthorized structure, serving as an administrative item. The E.O. required the applicant to submit an NOI for a permanent structure that was done. This went to Stantec for a consultant. It went through a number of reviews. The applicant is here, as is our consultant from Stantec, to provide ConCom with a briefing and update and for our consultant. The applicant's representative to present what we think may be a final briefing before ConCom.

C. Rokos, representing Jay McPartland and Hatters Point Marina. The big issue last time was that the marina building has an issue that the foundation was on a full foundation, but since then, the foundation plan

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has been revised and the foundation is on piles now. We've been working with Stantec and have addressed all their concerns and comments from them. One other thing was mitigation for building a building in a NO DISTURB zone. Jay has a parking lot across the street and provides public access to that parking lot. People could then launch kayaks and canoes at Baileys Pond, with hiking trails, etc. That was mitigation for building in the no disturb zone.

Suzanne Egan: Typically, that would be something a little bit more towards the interest of the act and protecting that area rather than just providing public access. That sounds like a Chapter 91 issue, as opposed to a wetlands protection act issue. In most instances, we'd want some sort of mitigation with regards to the interest of the wetlands protection act. For planting or something related to that. In your experience, you'd think that would be the case?

Scott David, representing condominium owners at Hatters Point: There is mitigation and plantings being done in this whole area as part of the residential project. That could be considered mitigation.

Suzanne Egan: So where you are planning to build a building, what is there now?

Scott David: Grass.

Suzanne Egan: Grass. So you are taking one area that was occupied. I thought there was an issue about whether or not this was previously disturbed area?

C. Rokos: Technically, everything on this historic mill site is previously disturbed.

Kinsey Boehl: One question I'd have is, the marina building, now we're considering that as being activities on land that was a historic mill complex, even though that marina building never really existed, legally, right?

John Lopez: At the NOI hearing, the condominium complex, ConCom agreed that the whole site met the qualifications of a historic mill complex.

Suzanne Egan: Are you expecting ConCom to issue an Order of Conditions tonight? Or are you stating that you will submit something?

C. Rokos: I was thinking it could be a condition to an Order of Approval.

Alan Corey: We could approve the building, then add to it in an OoC that they have to get the public access approved by the city council.

Suzanne Egan: So you will submit a plan to John, showing the parking spaces, where they are, and also a plan showing the easements?

C. Rokos: Yes. We can do that fairly quickly. We're trying to keep other things moving forward also.

Kinsey Boehl: So the submittal to city council, does that have to be date certain also?

John Lopez: I don't know.

Suzanne Egan: In your reviewing of this project, based on your experiences, did you find anything else that can be done for mitigation, or does that seem sufficient?

C. Rokos: I think what they are proposing for Bailey's Pond sounds like it would be a great benefit to the city, itself.

Motion was made by Suzanne Egan to approve the Order of Conditions on the basis of the plans submitted for this project at 60 Merrimac St. on the condition that a plan be submitted showing the public access to Bailey's Pond on the lot across the street under the control of the applicant be submitted to ConCom agent to ensure that there is public access to the parking and an easement plan and instruments to be submitted to city council for the city's acceptance. Also that this plan shall be submitted by within 30 days and that the applicant should work diligently to have this placed before city council for acceptance. Motion was seconded by Alan Corey. AIF.

Motion to close NOI 002-1129 was made by Alan Corey and seconded by Suzanne Egan. AIF.

NOI (002-1143) - 77 Elm Street (Martin)

John Lopez: We have the applicant here as well as the ConCom's consultant, Mike Leach from Stantec. This is for modifications to the existing structure and this has gone through a number of modifications, pursuant to Mr. Leach's review. The applicant is here along with our consultant to brief ConCom on what they hope will be met with reception on ConCom's part.

Brian Kutcher, Horsley-Witten Group, Senior Landscape Architect and Civil Engineer: You will recall at the last ConCom meeting, we provided an update. At that time, we had just received a Stantec review letter with their comments. Since that time, we've been working closely with John, the restaurant owner, the design team, and obviously Mike Leach to address any of the outstanding issues and comments that we received pertaining to the design. The only portion of this project that is actually within the 100 foot buffer is the corner of the building. That was the trigger, meeting with John, that required us to submit to ConCom. The work is being proposed on two lots that is owned by the applicant, David Martin. A parking lot in the upper left is a former residential dwelling, then some roadway improvements within the rear of the building that has a passageway that has an access easement. We've been meeting with the PLB and working with the city planner as well to address comments and concerns from them. We've also had conversations with the DPW and we've received comments from DPW and addressed those comments as well. I received an e-mail today from Peter Manor saying that he found our comments to be acceptable. That also relates to the connection tied into the existing storm drainage system, which is currently on the applicant's property. The city sewer and storm water system is on the property owner's property. That summarizes the comments that we've been working with Michael on. We submitted a response letter, and he provided some additional comments back. We needed additional clarification, and got that and addressed those concerns. We can't connect into the city sewer system without their approval, so once we receive that letter from DPW, we'll do that. There were also pipe size issues, and we would get additional information to explain the comparison between pre and post conditions, storm water runoff, and to make sure that there is capacity for the pipes which our analysis shows there is. Tonight, we're hoping for us getting approval for the proposed project, with a couple of items that could be addressed as orders of conditions. We talked to Michael Leach about that and I believe Stantec will be acceptable with that. I'm here to answer any questions you may have with regards to the project. That is where we are today.

Kinsey Boehl: So if the current design exceeds the city's storm water capacity, what do you do then?

Brian Kutcher: If the storm water flow, we're trying to manage and reduce impervious cover on the proposed lot that has existing development on it, and we've actually done that. This lot is the lot that we need to manage the increase in impervious cover. We've provided some underground storage that will help with that, so we can prove we are not increasing the flow into the existing system. If there is some sort of discrepancy between that, the applicant would have to work with DPW to increase the pipe size. The draining calcs are all done and submitted.

John Lopez: I have a draft of an Order of Conditions. I can probably get it out this week. I'd like to confer with our consultant to make sure that I've captured all of the issues in order.

Brian Kutcher: In our response letter, we've highlighted the ones that we would request.

Suzanne Egan: So in your opinion, is this appropriate for ConCom to issue an Order of Conditions at this point, or do we need it to be further clarified?

Brian Kutcher: I think there is enough information that the OoC can be done on it.

Suzanne Egan: But we don't have the final conditions or final plans yet. I guess we could say that this could be approved and the final conditions and plans would be approved (we have to delegate it to John) with your...

Kinsey Boehl: Is that particular print up to date? So we could just reference the print number so it gets filed with the city.

Suzanne Egan: But aren't there going to be some changes to these plans additionally?

APPROVED

Brian Kutcher: Right. It would be to address the PLB concerns only. Their concerns do not alter anything under ConCom jurisdictions. The revision date on this plan is April 11, 2016.

Motion was made by Suzanne Egan to approve an OoC for NOI 002-1143 for 77 Elm Street on the basis on the basis of plans submitted with a revision date of April 11, 2016. Motion was seconded by Alan Corey. AIF.

Motion was made by Suzanne Egan to close the public hearing. Motion was seconded by Alan Corey. AIF.

**NOI (002-1136) -14 PLEASANT VALLEY ROAD- GOODWIN CREEK MARINA
MCKENZIE**

Continued to May 2 meeting.

NOI (002-1132) – 5 MERRILL STREET- (LINDEN)

Continued to May 2 meeting.

**NOI (002-1139) – RIVERFRONT DRIVE & PLEASANT VALLEY ROAD, MAP110 LOT 4A
(DESMARAIS)**

Continued to July 18 meeting.

NOI (LOCAL ONLY) – 9-13 SOUTH HAMPTON ROAD (QUINTAL)

Continued to May 2 meeting.

**REQUEST FOR CERTIFICATE OF COMPLIANCE (002-1127 – 78 LAKE ATTITASH ROAD
(BUSCANERA)**

Continued to May 2 meeting.

NOI (002-1142) – 78 LAKE ATTITASH ROAD – (BUSCANERA)

Continued to May 2 meeting.

NEW BUSINESS :

RCoC (002-0954) – 46 FERN AVENUE (COOGAN)

John Lopez: This is actually a request for a Certificate of Compliance. This was a project that was approved a long time ago. The applicant unfortunately at the time of sale (sold with an outstanding OoC) and the property owner is here tonight to inform ConCom in more detail, but the OoC were never reviewed at the time of sale. The property owner never knew that there was an OoC on his property. He had no idea that he was the proud owner of a wet meadow, one of the most rare landscapes in the Commonwealth. He was unaware that there was a mitigation plan that remained outstanding. Through time, these things became evident. I'd say maybe 5 years ago, we had to address the mitigation plan. The ConCom has in its meeting plan a copy of the mitigation plan that was approved by ConCom as well as verification from Seakamp Environmental that the mitigation plan was in fact implemented. To editorialize: this is a most rare landscape in Massachusetts. Its perplexing as to how ConCom could approve this plan in the first place, as it has caused the property owners a lot of grief over time. It's a complicated landscape. ConCom approved it, the applicant purchased the house unknowing of the outstanding OoC, and as is often the case, the applicant realized that upon a closure date to sell the property, that there was an outstanding order. The closing attorneys brought that to the new owner's attention, and he came to me. I walked him through the process

on how to address the issue. He retained the services of I believe Millenium, who drew up the original plan. You can see that there are a number of outstanding issues that were done not in accord with the valid order. Driveway was extended, patio was installed, again, unbeknownst to the current property owner. That is my editorial comment. The applicant is here to brief the ConCom, address the issues to see how we can proceed.

Chris Coogan, 46 Fern Avenue: Bought my house in 2009. Trying to sell it right now, which I did. I just paid Millenium quite a bit of money to do this compliance thing. I don't want to pass this on to the people buying my house. ConCom came out and did a walk though of my property, and found that there was still a little more wetland there. Hey helped me straighten my fence out to square off my property. They okayed it at the next meeting where we were at, and not being the best versed on all this ConCom stuff, when they said it was ok, I thought I was done, but evidently I wasn't. That is on me, so I needed to get a cert of compliance to pass on to the new owners. So I'm looking for a compliance letter that says the stuff I did do, John told me I didn't need anyone else to come on my property to do the fencing and corrections, because this was all supposed to be done prior to the sale to me or completion or anything else. The corner of the deck was a little closer to the conservation land. The patio is 27 feet away and its regularly should be 25 feet away, so I have 2 feet there. I should have known that I needed to get a conservation permit for that. I got a permit for the shed that went up but not a conservation permit because I didn't know. I know now, but the driveway was the builder, the deck was the builder, and I did do the stuff I told ConCom I would do 7 years ago. So here I am today, not sure what I need to do.

Suzanne Egan: I'm a little confused. So this was originally an OoC was issued for this building project?

John Lopez: Right.

Suzanne Egan: So the house was going to be compliant with that?

John Lopez: No.

Suzanne Egan: Was there anything done after that?

John Lopez: The patio.

Suzanne Egan: OK, so that was done without a permit. Then, the homeowner said the ConCom came back out, and then there was an Enforcement Order, so I'm assuming that that means there was an E.O. issued against this property?

John Lopez: I don't recall if there was an E.O. issued but I believe we had compliance from Mr. Coogan. He was informed that there was a mitigation plan that was required to be implemented.

Suzanne Egan: So the mitigation plan was a condition of the original OoC?

John Lopez: Yes.

Suzanne Egan: So that was never done and then it was discovered this hasn't been done and you have to do this?

John Lopez: Correct.

Suzanne Egan: And since that time, the mitigation plan has been implemented, but since that time, there has been additional non-permitted activity in this jurisdictional area. Is that what the issue is?

John Lopez: Yes. Since that time, it would be the patio. Also, to let ConCom know, this is only 50% of the equation. The neighbor, who really was the original property owner, she was before the ConCom for outstanding issues, and I believe an Enforcement Order was issued on her. She is yet to find out if she has an open Order of Conditions. So she does not have a Certificate of Compliance either.

Suzanne Egan: So hypothetically, the way to bring this into compliance is to have something done to the patio or some mitigation occur because the patio was put in out of compliance. But other than that issue, there are no other outstanding issues, correct?

John Lopez: There are none.

Suzanne Egan: So the only thing that is out of compliance is the two foot issue because its 2 feet closer to the wetlands than it should be?

Chris Coogan: No, because it is 27 feet away from the wetlands, and it should be 25 feet away. So I have two feet extra.

Kinsey Boehl: The offsets are not shown on the plan.

Alan Corey: There is a flag right here, a wetland flag, and it can't be more than 2-3 feet away. That's not 27 feet.

John Lopez: You're right, it's not.

Alan Corey: So maybe that is an old flag, if the deck was done by the builder. If the wetland was filled, the dash line, is that 27 feet away?

Chris Coogan: Yes, because when they did the site walk, and Michael Seakamp re-did everything over here, saying that there was an extra 600+ feet of wetland, and that is why they let me move the split rail fence to where it was.

Suzanne Egan: Did we have the original plan? The original plan that was submitted with the Order of Conditions? Seems to me what is put before us is something to say that it is on compliance but without the original plan, it's difficult to do that.

John Lopez: The letter from Millenium identifies all the outstanding issues that are not in compliance. So the as-built plans or the original approved plans would be in our file archives, because this goes back to 2008. They can be provided, I just don't have them with me tonight. The other outstanding issue is the driveway was extended further than what was approved. Did you have the opportunity to measure the driveway? I think the original length was to be 21 feet? But the driveway today is 73 feet.

Kinsey Boehl: Where are the solutions for this? What's your arrangement with your buyer? Because we could say, "ok, you've got to do plantings, do this, do something else..." What is your arrangement with the buyer?

Chris Coogan: I told the buyer I would try to get this settled so he doesn't have to do anything with it. If I had to take a monetary fine for the patio, I would. There's plenty of plantings now, all around the property.

John Lopez: I think what the ConCom is asking is, if they were to require plantings to be installed, do you have a legal right of access at this point?

Chris Coogan: I don't know. I just sold the property yesterday.

Kinsey Boehl: In the wet areas, are there invasives?

Chris Coogan: A few, in the Culvert there is a few that have re-grown over 9 years. In the natural meadow, its just nice looking weeds and things like that. There are no trees. The meadow is open. There is a split rail fence on my side. There is a split rail fence on my neighbor's side. It only gets mowed once a year after October 1.

Kinsey Boehl: A couple things stand out. These dimensions aren't known to us. We don't know what the original plan said, other than what may be different from Millenium Engineering, and there are no waivers?

John Lopez: This was according to our regulations at the time.

Alan Corey: So this is the only issue that there is.

Suzanne Egan: It seems to me that everything you put into an Order of Conditions is not in compliance. So it seems there is already a ...there is an impact to the jurisdictional area, so how is that remedied? That's the problem, we just don't know what the remedy is. If we have to find a remedy that makes sense, and that meets the interests of the act, and the only thing I can think is to create more wetlands on the property and somewhere, maybe the back lot. But maybe back here, after the existing patio, it looks like that is a lawn at this point.

John Lopez: I think that would be very complicated.

Suzanne Egan: So do you have a solution for us?

APPROVED

John Lopez: Well, ConCom has a full spectrum of options.

1. You can have the applicant remove the additional section of driveway.
2. The former applicant / property owner could be required to submit a planting plan with winterberry, or native non-hybridized wetlands plants to increase the habitat, maybe in the lawn area

This would not have happened if an environmental monitor been hired. If you issued a Certificate of Compliance, it is over and done with. If you ask the applicant to come up with a planting plan, then it would be in ConCom's best interest NOT to issue a CoC, because you'd have no legal leverage at that point.

Kinsey Boehl: Then the current owner is on the hook to perform that... if we issue mitigating actions.

John Lopez: I don't think you can do that. It is either now or never.

Suzanne Egan: How about this, Mr. Coogan, you don't have control over this property anymore and you're trying to get a CoC. So I don't see how we can say or does it make sense to do a mitigating on site. So I think what we can do is say "this type of mitigation would be appropriate... x planting plan would be appropriate here. It can't be done this way, and it will cost you X amount of money to do that...you'd pay a fine of that amount of money and that goes into a fund and that gets done on some land that is in control of ConCom.

Kinsey Boehl: There was that group of school children that were doing the science project at the middle school.

Alan Corey: Probably the easiest way out is to issue a fine and then issue a Certificate of Compliance.

Suzanne Egan: I think so, but the only problem is, we don't have the information here tonight, so we won't be able to do that. So you need to work with John to come up with a mitigation plan.

John Lopez: So, you're not looking at saying, "ok, \$600 fine and go out and cost out how many trees you can buy for \$600" or something like that?

Alan Corey: The extra you have like the driveway, and the extra area of the patio, and how much mitigation area are we going to need approximately, and then what may be the cost to put trees / plants / shrubs down in there? That would be the fine.

Kinsey Boehl: The next part of that is, how do we make sure those funds go towards improving current ConCom property?

John Lopez: For that, I would say we get the voluntary compliance of the applicant to state that he wishes this money to be used for ConCom in the following way: to implement plantings / mitigation on the: As long as it isn't an outrageous amount of money. I just spent \$4000 to get Millenium to do this. I'm trying wetlands on this property.

Chris Coogan to do the best I can.

Alan Corey: A planting plan should not be that expensive.

Chris Coogan: I'm all for it.

Alan Corey: Our next meeting is in 3 weeks, and we can finish it off then.

Suzanne Egan: Before our next meeting happens, is you have to do a landscaping mitigation plan for the increased area in the wetlands that was permitted under the OoC and you are going to come up with a cost for that, and work with John on setting the cost for that, then we'll determine the fine on the basis of that.

Suzanne Egan makes a motion to continue this hearing to our next meeting on May 2. Motion was seconded by Alan Corey. AIF.

RDA – 34 BIRCHMEADOW ROAD (MCDERMOT)

John Lopez: This is an RDA for the proposed installation of a dock at 34 Birchmeadow Road, although the RDA also states that the dock would be installed at the end of a right of way between Star Lane right of way...2 and 4.

Jim McDermot. 34 Birchmeadow Road: Basically with this determination, the reason we are bringing this determination in front of ConCom is this is not for the installation of a dock, but this is in relation to an existing dock that I've had in the water since I bought the property 23 or 24 years ago. I have an application that mirrors all the information outside of the application information. I have an application filed with the state, DEP under Chapter 91 C, for a dock permit. The state needs some sort of local agent like this commission that has some awareness on the local level as to what is going on. So they told me to seek a determination on the two items that are listed. One is whether they are depicted on the plans and whether it is in the jurisdiction of the Wetlands Protection Act. 2. Does the dock itself sitting on the bottom of the lake impact the lake at all, considering it is put in during the spring and taken out in the fall. If there is impact on the wetlands, in this case the Great Pond, how does that impact the lake. Basically, in addressing the first one, does it fall into the Wetlands Protection Act? So in my opinion, my view, it doesn't. The dock actually predates the Wetlands Protection Act. Included in our packet are two affidavits from Essex Count Deeds office. One is from Herbert Gurney, 4 Winter Street in Amesbury, dated Feb. 9, 1963, which predates the Wetlands Protection Act, stating there was a dock on what is know as driftway. The second document dated May 24, 1969 by Walter DeNullis, the subsequent owner, stating basically the same thing. I've had legal issues with my neighbors that went through land court and all been resolved. These plans are no longer the master for use, and the driftway does not show up on the new modified existing maps. So there is no current map that can be referenced, only these previous legal documents. The town actually suggested I move the dock away from the Nagle property to Star Lane because of the location of her dock. So the first question that needs to be answered is, since this dock predates the Wetlands Protection Act, does it fall under the Wetlands Protection Act?

Kinsey Boehl: How are you proving that it doesn't?

Jim McDermot: It predates the actual conception of the Wetlands Protection Act, which I believe was in either 1972 or 1973. There are two affidavits in the packets stating the dock was there and predates the Wetlands Protection Act. Then dock has no pilings, just four legs and feet. It is not in the water yet.

Alan Corey: So why are you before us, since it looks like you have a pre-existing dock?

Jim McDermot: That's the question that I need answered, because I have an application with the state, because a complaint was received about my dock not having a permit. So I filed under Chapter 91 C with the state, and then the state said they can't issue it unless they get something from ConCom that you are aware that this is here and your decision is whether it predates or whether it impacts the thing. Once a decision is rendered, and the appeal period has passed, it goes to them.

Suzanne Egan: So I would not be able to vote on something like that, when all I have in front of me is an affidavit from 1969.

Kinsey Boehl: The affidavit also doesn't have dimensions. How big was it in 1969, or 1963.

Jim McDermot: Not to cloud the issue, but for years there have been 700 docks (hundreds of docks) on Lake Attitash not permitted. There are quite a few now that are not permitted.

Suzanne Egan: I think what we need in order to move forward on this application is some additional information. If you want to supply that, we can continue this tonight and you can supply us with additional information showing that this dock was actually in fact (with the dimensions included that you are proposing) that this dock was in the lake prior to the Wetlands Protection Act.

Jim McDermot: There is no way to prove that. Those documents don't exist. Back then, they didn't do that.

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Suzanne Egan: Then we would not be able to make the determination that this is exempt from the Wetlands Protection Act. If you can't prove that, then we can't vote for it, therefore you'd have to file a Notice of Intent.

Jim McDermot: It doesn't matter to me if you deny this, because this is why I'm working with the state and they're trying to help me here. If you deny it, and I don't like the answer, I can appeal it. When I appeal it, it goes to them.

John Lopez: If I may interject here, what the applicant is referring to would be an appeal initiated by DEP Waterways division. I consulted with DEP Wetlands division, and they tell me Waterways has no jurisdiction.

Suzanne Egan: I think what the applicant is asking us to do is to deny this negative determination.

John Lopez: Well, you can't deny an RDA. You can give it a positive determination then he'd declare a Notice of Intent. Also for the public record, I sent to the applicant's wife, dated 3-29-16, pursuant to my initial review of the project, strictly on environmental reasons. I stated that the dock as proposed, it is questionable whether or not the ConCom would find that that reflects best management practices in that it is in more of an older design, wooden, and in the interest of disclosure, I forwarded a copy of the RDA for 75 Whitehall Road, which appears later on our agenda, as the type of dock. It is an aluminum dock with wheels, easy to move in and out. I told the applicant that that would be more reflective of better management practices, something that might meet the commission's approval, moreso than a wooden structure that was being proposed. But that was based purely on an environmental view.

Suzanne Egan: So I'd like to make a motion for a positive determination.

Alan Corey: How long have you been putting that dock in and out of there?

Jim McDermot: Since 1990 or 1991.

Alan Corey: So you are saying you've been moving this dock in and out of the lake for 20 years?

Jim McDermot: Yes, except for one year.

Alan Corey: But prior to that, we don't know if prior residents had been putting it in and out of that location.

Jim McDermot: It was in the water when I bought the property in October.

Alan Corey: I think your best bet is to go through the appeal.

Kinsey Boehl: Are there any abutters?

My name is Sarah Guarino, I represent Pauline Belisle at 4 Star Lane, on the other side of the driftway: The legal matters that the applicant referred to involve determining who owns the driftway and who has the right of access. So, for the record, I do ask that the commission issue a positive determination of applicability and instruct the applicant to seek a Notice Of Intent. I raise the same issues in the correspondence I've provided to ConCom. I think that the applicant mis-states the standard that the commission is expected to apply when determining whether or not something would impact the Wetland area. Tom Hughes is also here with me, if you will allow him to speak.

Tom Hughes, Hughes Environmental Consulting: The question B1A is whether or not the areas, regardless of what is there, are subject to jurisdiction under the Wetlands Protection Act. It is a great pond. It is banked. It is buffer zone to those and it is bordering land subject to play. There is no question that this is a jurisdictional area. The next question is whether or not the work is subject to the Wetlands Protection Act. Putting in a dock is subject to the Wetlands Protection Act. We provided a few years ago a photograph showing the changes in dock configurations over the years. This is not something that has stayed the same configuration. What is proposed here is larger than what I have seen on the property in the past. There is no question that shading is an alteration. Placing blocks on the bottom of the lake is an alteration. Placing the dock legs on land under water, which is another resource area, is an alteration. In addition, what is not checked off on this request is the 1D, whether or not this is subject to municipal ordinance. I'll note that not

only is it subject to the ordinance, but you have performance standards for docks that are quite stringent in terms of determining how a dock affects the substrate, the currents, etc. When this dock goes in, boats are going to be tied to it, you get cropwash, you get sediment, this is not just something being placed in the water with no impact. So I don't see how you can do anything but issue a positive determination, and we'd ask that you do so under 1A, C,, and D.

Kinsey Boehl: Ok, thank you.

Suzanne Egan makes a motion that ConCom issue a positive determination for this application for the RDA at 34 Birchmeadow Road. I'd make that determination under all of the boxes checked on the application.

Jim McDermot: One thing that the state asked me to have answered is that if you, under 1 C where I put 'ask the hand written question, does the dock pile and sitting on the bottom of the lake impact the lakebed? They're take on it was no, then it was up to you guys as to whether it actually fell under... I'm just repeating what they told me. If it does impact the lake bed, since there are all these docks that do the same thing, what is that impact?

Suzanne Egan: I guess my response would be that you have a request for determination of applicability before us, and you have these determinations checked off. We're saying that every single one of these, it is applicable under the Wetlands Protection Act.

Kinsey Boehl: And I would say, partially, it doesn't meet the best practices for docks.

Suzanne Egan: Exactly. So that the way to have any of that review of this dock is to submit a Notice Of Intent, then we can fully review it then look at the jurisdictional interests in your project.

Suzanne Egan's motion on the floor is seconded by Alan Corey. AIF.

RDA 15 LAKESHORE DRIVE (COHN)

John Lopez: This is an RDA in support of a request to extend an existing driveway approx. 6 feet to accommodate two cars. There was considerable dialogue between myself and the applicant's representative concerning the type of material to be used. My first response was pavers. The applicant suggested another type of pervious material. Apparently with the property owner's consent, agreed to install pavers. So one question before ConCom is whether or not as in all cases this warrant and Notice of Intent, or if this is sufficient enough to do an RDA suffice.

Tom Hughes, Hughes Environmental Consulting: I'm here on behalf of Bruce Cohn. A little history, this was a house that was reconstructed I think prior to all the folks now on this commission. This is a very difficult site. It was a model project where we had difficult water issues, the house was constructed when we were in constant contact with John Lopez, there was a rain garden that was installed. All of the water from this house ends up in a rain garden down at the base. We provided water quality treatment and all kinds of really good things on the project. I think it went extremely well. Bruce is a very conscientious property owner when it comes to living on a lake. He is meticulous. Right now, there is enough space to park a car and a little bit of another car. There is a stone retaining wall here. We're proposing to essentially another 6 feet with a planter at the base to essentially extend it to allow for a second car to park. Then the existing wall remains in place, the top course of stones would be removed, and then a surface put over that. There really is not a lot of disturbance or fill. The wall is constructed 6 feet out, built up, and then it gets backfilled from the top. We show erosion control down stream of that. The work itself is quite a good distance from the lake. We discussed surface materials with John, who felt that pavers would be a cleaner option for you guys to look at and approve, and show how minimal the project was. So we came up with a paver design to use. It really is a very minimal project. We have erosion control that ensures that nothing gets down to the lake. Just to ensure there would be no impacts, I'm willing to do this with the same kind of monitoring used when they constructed the home and go by weekly and go by after significant rain storms to make sure everything

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is ok that the contractor has been responsive. Bruce worked with the neighbor because the existing driveway strays slightly onto the neighbors land and has for many decades. They worked out an easement that actually allowed this driveway expansion. There is that easement plan included in the RDA. We also included an e-mail of support from the neighbor. Basically, the end of the driveway is going to be right in line with the edge off the house and the end of the proposed construction is about 60 feet. The total duration of the work is between one and two weeks.

Suzanne Egan: We just had tonight another agenda item that had non compliance built into its history. With this agenda item, we really don't have a lot of information history-wise. So what I would suggest is that we...

Tom Hughes: It is in there. It's all included in the packet.

Suzanne Egan: So where on this plan can I see a dimension that takes me from the point of the street until the end of the lot. There is no scale on this plan at all.

Tom Hughes: This is the scale here. The driveway will be 24.8 feet from the property line. The street is actually a couple feet off the property line. I think the information you want is there, it just may not be in the layout that you are used to seeing. There is a finite space that we're working with. There is no room to deviate from that space. But it is within the easement. If you guys wanted to condition a negative determination and that we do weekly monitoring, and after a half inch of rain, I'm happy to do that. This is a short duration project. And if John is nervous about anything, we'd come back before ConCom.

Suzanne Egan: My concern is that this plan, to me, doesn't have sufficient detail in order for me to see that there are compliances, there's no dimensions and no real information regarding the work that is going to occur here, so we know whether or not there has been compliance with this plan.

John Lopez: Why couldn't we just amend and continue to have this reviewed by the commission next time, just a few weeks away?

Tom Hughes: The problem is, Bruce would like to get the work done before the lake gets busy. The roads are narrow, summer is coming up, and if you issued now, it is going to take you a week or so before the decision is out the door, at least. So May 3rd, if we wait for the appeal period, so we're actually doing work uncomfortably close to Memorial Day and we have to get the mason lined up. It's not ideal, if that is what ConCom desires, we'll do that. But sooner is better for us.

John Lopez: Just to articulate this as a condition in a negative determination.

Suzanne Egan makes a motion for a negative determination and to list on the plan dimensions, fill quantity, and materials and then we want the monitoring, and a 2X3 sign ACC 002-15. We also need the limits of the work or something, and the easement agreed upon.

Motion was seconded by Alan Corey. AIF.

RDA - 75 WHITEHALL ROAD – (CYNEWSKI)

John Lopez: This is a proposal for a dock to be on Lake Gardner property. This is what I would consider a model dock. So as with every RDA, is the project applicable to state and local laws, which it is. So ConCom has to determine whether or not this passes the threshold for a NOI or whether an RDA will suffice, and whether or not the dock is reflective of best management practices. We've been provided with a copy of DEP handbook. The applicant has been advised that the dock storage as to be outside the limit of 100 feet from the resource in the off season. The dock is on wheels, so that would facilitate ease of relocation.

Steve Cynewski, 75 Whitehall Road: I went to John with this for guidance. I researched all kinds of different docks. Its all aluminum or plastic. It's a pretty nice system.

Kinsey Boehl: John, do you think this meets best practices?

John Lopez: I do. I think it is a fine example of a dock.

Suzanne Egan: I want to see a plan, just to see the location.

A P P R O V E D

Steve Cynewski: In my application, I mentioned I wanted to put it close to the center of my property. Since it will be on wheels, I can't tell you if it is going to be 52 feet from my boundary this year, and right in the same spot again next year.

Suzanne Egan: I would only ask about the land where the dock is being placed. It will be sitting on the bank of the lake. I wonder if that is going to be in a particular area and you might be moving it around throughout the season?

Steve Cynewski: It is that mobile, but no it won't be moved during the season. It will store at the back of the house, which is more than 100 feet from resource.

The possible issue of the dock interfering with freshwater mussels, an endangered species, was discussed at length.

Alan Corey: Get in touch with National Endangered Species on their website to see a list of everything you need to send them.

John Lopez: Essentially, you've already amassed the information. Its just another form to fill out, then you do the NOI. We can motion to waive that filing fee so he doesn't have to pay it again. But you need to repost a notice in the papers.

Motion was made by Suzanne Egan for a positive determination. Alan Corey seconded the motion. AIF.

Mr. Cynewski will be submitting an NOI, working with John Lopez to get that done.

MOTION TO CLOSE THE MEETING WAS MADE BY SUZANNE EGAN.

MOTION WAS SECONDED BY ALAN COREY. AIF.

MEETING WAS ADJOURNED AT 9:27 P.M.

Transcribed by Paul Bibaud.